



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-104
October 14, 2004

MISCELLANEOUS ADMINISTRATIVE REVISIONS

BACKGROUND: NASA has modified its current practice for issuance and maintenance of the NASA FAR Supplement (NFS) by only publishing in the Federal Register those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors and are subject to public comment. The NFS will continue to integrate into a single document both regulations subject to public comment and internal Agency guidance and procedures that do not require public comment. The single official NASA-maintained version of the NFS is available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

The periodic review of the NFS conducted in concert with the above new practice identified various administrative and editorial changes. In addition to the changes required for completeness and understanding of regulatory text, editorial and administrative changes are made to internal guidance and procedures to update references and make corrections.

CLAUSE CHANGES: None.

PARTS AFFECTED: Parts 1815, 1846, 1851, and 1852.

REPLACEMENT PAGES: You may use the enclosed pages to replace 15:3, 15:4, 15:17, 15:18, 46:1, 46:2, 51:1, 51:2, 52:30.1, and 52:30.2 of the NFS.

TYPE OF RULE AND PUBLICATION DATES: These changes were published as a final rule in the Federal Register on October 14, 2004 (69 FR 60967 - 60968).

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Enclosures

DISTRIBUTION LIST:
PN List

PART 1815
CONTRACTING BY NEGOTIATION

Subpart 1815.1--Source Selection Processes and Techniques

1815.101 Best value continuum.

When a written acquisition plan is not required by 1807.103, the contracting officer must document in the contract file the source selection approach and the rating method to be used, how they will be used, and how these will result in selection of the best value to the government.

Subpart 1815. 2--Solicitation and Receipt of Proposals and Information

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) Except for acquisitions described in 1815.300-70(b) contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed \$10,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. If the DRFP contains Government-unique standards, potential offerors should be invited to identify voluntary consensus standards that meet the Government's requirements as alternatives to Government-unique standards cited as requirements, in accordance with FAR 11.101 and OMB Circular A-119. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(B) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(C) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(D) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(E) If performance-based payments are planned to be used in a competitive negotiated acquisition, the DRFP shall request potential offerors to suggest terms, including performance events or payment criteria. Contracting officers shall use that information to establish a common set of performance-based payments parameters in the formal RFP when practicable.

(F) The procurement officer may waive the requirement for a DRFP upon written determination that the expected benefits will not be realized given the nature of the

supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

(f)(i) Upon release of the formal RFP, the contracting officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the contracting officer or other authorized representative. This procedure is commonly known as a "blackout notice" and shall not be imposed before release of the RFP.

The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(ii) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

1815.203 Requests for proposals.

1815.203-70 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting called a Solicitation Review Board (SRB) as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.370, the SEB shall review and approve the RFP prior to issuance.

1815.203-71 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Assistant Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology omitted from the RFP itself should also be provided.

1815.203-72 Risk management.

In all RFPs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

1815.204 Contract format.

1815.204-2 Part I - The Schedule.

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

1815.204-5 Part IV - Representations and instructions.

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision.

1815.204-70 Page limitations.

(a) Technical and contracting personnel will agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer,

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the page limitation for the contracting portion of an RFP (all sections except Section C, Description/

For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

Subpart 1815.4--Contract Pricing

1815.403 Obtaining cost or pricing data.

1815.403-1 Prohibition on obtaining cost or pricing data.

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception.

(c)(4) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with [FAR 1.704](#). A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HK).

1815.403-170 Waivers of cost or pricing data.

(a) NASA has waived the requirement for the submission of cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to determine price reasonableness and cost realism.

1815.403-3 Requiring information other than cost or pricing data.

(b) As indicated in 1815.403-1(b)(1), the adequate price competition exception applies to all competitive acquisitions. For other than firm-fixed-price competitions, only the minimum information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed-price competitions, the contracting officer shall not request any cost information, except as required by FAR 22.1103, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

1815.403-4 Requiring cost or pricing data.

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of that agreement.

1815.404 Proposal analysis.

1815.404-2 Information to support proposal analysis.

(a)(1)(A) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(B) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(C) When the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMA ACO or DCAA.

(D) Requests for field pricing assistance may be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.

1815.404-4 Profit.

(b)(1) (i)(a) The NASA structured approach for determining profit or fee objectives, described in 1815.404-471 shall be used to determine profit or fee objectives in the negotiation of contracts greater than or equal to \$100,000 that use cost analysis and are:

(1) Awarded on the basis of other than full and open competition (see FAR 6.3);

(2) Awarded under NASA Research Announcements (NRAs) and Announcements of Opportunity (AO's); or

(3) Awarded under the Small Business Innovative Research (SBIR) or the Small Business Technology Transfer Research (STTR) programs.

(b) The rate calculated for the basic contract may only be used on actions under a negotiated contract when the conditions affecting profit or fee do not change.

(c) Although specific agreement on the applied weights or values for individual profit or fee factors shall not be attempted, the contracting officer may encourage the contractor to –

(1) Present the details of its proposed profit amounts in the structured approach format or similar structured approach; and

(2) Use the structured approach method in developing profit or fee objectives for negotiated subcontracts.

(ii) The use of the NASA structured approach for profit or fee is not required for:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of materials supplied by subcontractors;

(e) Termination settlements; and

(f) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

(c)(2) Contracting officers shall document the profit or fee analysis in the contract file.

1815.404-470 NASA Form 634.

NASA Form (NF) 634 shall be used in performing the analysis necessary to develop profit or fee objectives.

1815.404-471 NASA structured approach for profit or fee objective.

PART 1846
QUALITY ASSURANCE

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PART 1846

QUALITY ASSURANCE

1846.000 Scope of part.

The Government has a duty to assure that appropriated funds are spent wisely. That duty is fulfilled in part through surveillance. Surveillance may be conducted through "insight" (i.e., monitoring of selected metrics and/or milestones) or "oversight" (i.e., Government review and concurrence with contractor decisions). The decision to use insight or oversight is based on an assessment of the risk inherent in the activity being surveilled. Surveillance must be conducted whether or not the contract effort has been structured as performance-based.

Subpart 1846.3--Contract Clauses

1846.370 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.246-70, Mission Critical Space System Personnel Reliability Program, in solicitations and contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program.

(b) The contracting officer shall insert the clause at 1852.246-73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

Subpart 1846.4--Government Contract Quality Assurance

1846.401 General.

(a) The quality assurance surveillance plan (QASP) which the project office prepares in conjunction with the statement of work is preliminary. It reflects the Government's surveillance approach relative to the perceived programmatic risk, and is written at a general rather than specific level because the risks will not be completely identified at that time. After contract award, contracting officers shall ensure that the QASP is revised to reflect the risks associated with the successful proposal. This final QASP shall not be included in the contract, but should be periodically reviewed to ensure its currency.

1846.470 Contract clause.

The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts to specify the location(s) of quality assurance functions.

Subpart 1846.6--Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670-1 General.

(a) This subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series).

(b) MIRRs are used to document contract quality assurance (CQA), acceptance and commercial shipping/packing lists used to evidence Government contract quality of supplies and services, and shipments. MIRRs are not used for --

PART 1851
USE OF GOVERNMENT SOURCES BY CONTRACTORS

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PART 1851
USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1--Contractor Use of Government Supply Sources

1851.102 Authorization to use Government supply sources.

(e) The contracting officer shall use substantially the following format for letters authorizing contractor use of Government supply sources:

SUBJECT: Authorization to Lease, Rent, or Purchase from General
Services Administration (GSA) Supply Sources

(Contractor's name) _____

(Address) _____

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of supplies and/or services under Contract No. ____ available for purchase by Government agencies either directly from GSA stock or under Federal Supply Schedules subject to the limitations set forth in this authorization.

(ii) The leasing or rental of equipment for use on Contract No. ____ available for lease or rental by Government agencies under Federal Supply Schedules subject to the limitations set forth in this authorization.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the Government is not liable on supplies or services purchased under this authorization.

(2)(i) Purchase orders under GSA schedules and contracts shall be placed in accordance with the terms and conditions of the GSA schedule or contract and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the GSA contractor) and shall contain the following statement:

"This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. _____, pursuant to written authorization dated _____, a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern."

(ii) Orders for items in the GSA Supply Catalog shall be placed in accordance with the Catalog and this authorization and shall include the address to which billings are to be sent. Bills are not issued by GSA until after shipment has been made and should therefore be paid promptly. Any necessary adjustments will be made by GSA subsequent to payment. All orders shall contain the following statement:

"This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. _____, pursuant to written authorization dated _____, a copy of which (is attached) (you have on file)."

(3) *(Insert any other provisions and restrictions.)*

(4) *The authority hereby granted is not transferable or assignable.*

(Contracting Officer)

(e)(3) Contracting officers shall use NHB 4100.1, NASA Materials Inventory Management Manual, to obtain activity address codes to enable use of FEDSTRIP and MILSTRIP.

1851.102-70 Contractor acquisition of filing cabinets.

(a) The Contracting officer must approve any planned contractor acquisition of filing cabinets whose title will vest in the Government. The contracting officer shall ensure that the contractor takes the following actions before submitting a request for approval:

(1) Transfer inactive records to contractor storage areas;

- (2) Dispose of unnecessary records in accordance with corporate procedures;
- (3) Use less expensive shelf filing methods; and
- (4) Take other actions to reduce the need for filing cabinets.

(b) If after taking the actions in paragraphs (a)(1) through (4) of this section, the contractor requires additional filing capacity, it shall submit for contracting officer approval a request to order filing cabinets. This request shall include a discussion of why sufficient additional filing capacity is necessary and shall address the results of the actions in paragraphs (a)(1) through (4) of this section. The contracting officer shall review the request in consultation with the Records Management Officer, the Property and Supply Officer, and the project officer, if appropriate.

(c) If the need for filing cabinets is approved, the contracting officer shall attempt to fill the need by providing any available excess items of the type required through appropriate property accountability channels. Approved requests that cannot be filled from excess shall be returned to the contractor with an authorization to obtain file cabinets, preferably through GSA.

(b) The Contractor shall take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the Changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the Contractor fails to promptly take the necessary corrective action.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that exceed the micro-purchase threshold.

(End of clause)

1852.223-73 Safety and Health Plan.

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN (APRIL 2002)

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPG 8715.3, NASA Safety Manual, Appendices). The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) When applicable, the plan shall address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), and high-value equipment and property.

(c) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts that contain one or more of the following conditions:

(1) The work will be conducted completely or partly on premises owned or controlled by the government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazards warrants use of the clause.

(d) This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

ALTERNATE I (APRIL 2002)

As prescribed in 1823.7001(c), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan (see NPG 8715.3, NASA Safety Manual, Appendices). The plan shall be submitted within the time specified by the Contracting Officer. Failure to submit an acceptable plan shall make the bidder ineligible for the award of a contract.

1852.223-74 Drug- and alcohol-free workforce.

As prescribed in 1823.570-2, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE (MARCH 1996)

(a) **Definitions.** As used in this clause the terms "**employee**," "**controlled substance**," "**employee in a sensitive position**," and "**use, in violation of applicable law or Federal regulation, of alcohol**" are as defined in 48 CFR 1823.570-2.

(b)(1) The Contractor shall institute and maintain a program for achieving a drug-and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this clause does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug Testing Programs," in which references

to "DOT" shall be read as "NASA", and the split sample method of collection shall be used.

(c)(1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol